

AMENDED IN ASSEMBLY JULY 13, 2009

AMENDED IN SENATE MAY 28, 2009

SENATE BILL

No. 752

Introduced by Senator Wiggins Correa
(Coauthor: Assembly Member Silva)

February 27, 2009

~~An act to amend Section 20815 of the Government Code, relating to public employees' retirement. An act to add Section 31678.31 to the Government Code, relating to county employees' retirement, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 752, as amended, ~~Wiggins Correa. Public employees' retirement: Solano County. County employees' retirement: Orange County.~~

(1) The County Employees Retirement Law of 1937 permits counties and districts, as defined, to provide retirement benefits to their employees pursuant to its provisions. The law permits the board of supervisors or the governing body of a district in Orange County, by resolution adopted by majority vote and pursuant to a memorandum of understanding, as specified, to make certain formulas for the calculation of benefits for general or safety members applicable to the employees of a bargaining unit comprised of general members, safety members, or employees of the Probation Services Unit and Probation Supervisory Management Unit, as specified, and requires the affected members, subject to certain conditions, to pay some or all of those additional contributions, as specified.

This bill would permit, in Orange County, the board of supervisors, or the governing body of a district within the county, by resolution adopted by majority vote, to require an employee hired after approval

of the resolution, to make a written election between 2 specified pension calculations within 45 days of beginning employment. The bill would require that an employee who fails to elect one of the pension calculations within 45 days of beginning employment be deemed to have elected the other. The bill would also permit the resolution, as described above, to require a current employee to make a similar written election regarding his or her own pension benefits for future service within 180 calendar days of approval of the resolution. The bill would require that a current employee who chooses to terminate a specified pension calculation be provided with a written explanation of the effect and impact of the termination and sign a specified affidavit. The bill would further permit the resolution to require a current employee of the county or district, hired before approval of the resolution, who subsequently become eligible for a specified pension calculation to make a one-time written election between the 2 pension calculations for future service within 45 days of becoming eligible. The bill would require that the employee who chooses to terminate a specified pension calculation be provided with a written explanation of the effect and impact of the termination and sign a specified affidavit. The bill would provide that failure to make an election within 45 calendar days shall be considered cause for termination of employment until the required election has been made. The bill would make these elections irrevocable, except as specified.

The bill would require that a retirement allowance for service rendered prior to the effective date of the election be calculated under the employee's prior pension calculation and would provide that an employee who has made this election is not eligible for retirement unless the employee meets the minimum requirements of the provisions applicable at the date of retirement. The bill would require that specified pension elections include the signature of the employee's designated beneficiary and a specified written declaration made under penalty of perjury. By expanding the crime of perjury, this bill would impose a state-mandated local program. The bill would require that an employee who elects the lesser of the 2 specified pension calculations be eligible to receive a contribution to a defined contribution program from the county or district based on the employee's contribution to a defined contribution program. The bill would permit the resolution to apply these provisions to unrepresented employees, as specified, and would provide that its provisions are not be applicable to safety members of the retirement system. The bill would provide that an employee who

fails to certify his or her election under specified circumstances would continue to be covered by his or her immediately preceding retirement plan, as specified. The bill would provide that the adoption of the resolution by the county would not extend to the employees of any district within the county, and would permit the governing body of a district to elect to make its provisions applicable to the employees of the district irrespective of whether the board of supervisors has made that election applicable to employees in the county.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

~~The Public Employees' Retirement Law requires that, after the implementation of the Trial Court Employment Protection and Governance Act, for counties contracting with the Board of Administration of the Public Employees' Retirement System, a trial court and a county in which the trial court is located jointly participate in the retirement system by joint contract. Existing law also requires the assets and liabilities of a county and a trial court jointly contracting with the board to be combined for purposes of setting the employer contribution rate for both the county and the trial court.~~

~~This bill would establish certain requirements that must be satisfied before a county that jointly contracts with the board, as described above, may issue a pension obligation bond. The bill would require the county and superior court to jointly approve and submit in writing to the board specified information on employees and certain lump-sum payments for purposes of preparing a computation of assets and liabilities. The bill would require the board to forward its computation of assets and liabilities to the county and the superior court. Following receipt of the computation, the bill would require the superior court and county to enter into a written agreement that would include, among other things, the amount and date of payment which the superior court would remit funds to the county subsequent to the issuance of the pension obligation bond.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~^{yes}.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 31678.31 is added to the Government*
2 *Code, to read:*

3 *31678.31. (a) Notwithstanding any other provision of this*
4 *chapter, the board of supervisors or the governing body of a district*
5 *within the county may, by resolution adopted by majority vote, do*
6 *the following:*

7 *(1) Require an employee hired after approval of the resolution,*
8 *to elect in writing, either the pension calculation stated in Section*
9 *31676.19 or the pension calculation stated in Section 31676.01.*
10 *The election shall be made within 45 calendar days of beginning*
11 *employment with the county or the district. If an employee does*
12 *not elect the pension calculation stated in Section 31676.19 within*
13 *45 days of beginning employment, the employee shall be deemed*
14 *to have elected the pension calculation stated in Section 31676.01.*
15 *An employee shall not be permitted to rescind his or her election*
16 *unless the board of supervisors or the governing body of a district,*
17 *through the adoption of a subsequent ordinance or resolution by*
18 *majority vote, makes a provision permitting the employee to rescind*
19 *the election applicable to the county or district.*

20 *(2) Require a current employee of the county or district covered*
21 *by the pension calculation stated in Section 31676.19, hired before*
22 *approval of the resolution, within 180 calendar days of approval*
23 *of the resolution to make, at the employee's option, a one-time*
24 *written election to terminate the application of the pension*
25 *calculation stated in Section 31676.19 for future service and elect*
26 *instead the pension calculation stated in Section 31676.01 for*
27 *future service. This election shall be signed by the employee. Prior*
28 *to signing an election, a current employee who chooses to*
29 *terminate the pension calculation stated in Section 31676.19 and*
30 *elects instead the pension calculation stated in Section 31676.01,*
31 *shall be provided by the county or district governing body with a*
32 *written explanation of the effect and impact of the termination. A*
33 *current employee who chooses to terminate the pension calculation*
34 *stated in Section 31676.19 shall be required to sign an affidavit*
35 *stating that the employee has been fully informed regarding the*
36 *effect of the termination and understands that the termination is*
37 *irrevocable. The affidavit shall also state that the employee has*
38 *chosen termination of his or her own free will and was not coerced*

1 *into termination by the employer or any other person. An employee*
2 *shall not be permitted to rescind his or her election unless the*
3 *board of supervisors or the governing body of a district, through*
4 *the adoption of a subsequent ordinance or resolution by majority*
5 *vote, makes a provision permitting the employee to rescind the*
6 *election applicable to the county or district.*

7 *(3) Require a current employee of the county or district, hired*
8 *before approval of the resolution, but not covered by the pension*
9 *calculation stated in Section 31676.19, who after approval of the*
10 *resolution becomes eligible for the pension calculation stated in*
11 *Section 31676.19, to make a one-time written election between the*
12 *pension calculation stated in Section 31676.19 for future service*
13 *and the pension calculation stated in Section 31676.01 for future*
14 *service. The election shall be made within 45 calendar days of*
15 *becoming eligible for the pension calculation stated in Section*
16 *31676.19. The election shall be signed by the employee. Prior to*
17 *signing the election, an employee who does not elect the pension*
18 *calculation stated in Section 31676.19 and elects instead the*
19 *pension calculation stated in Section 31676.01 shall be provided*
20 *by the county or the district governing body with a written*
21 *explanation of the effect and impact of the election. An employee*
22 *who does not choose the pension calculation stated in Section*
23 *31676.19 shall be required to sign an affidavit stating that the*
24 *employee has been fully informed regarding the effect of the*
25 *election and understands that the election is irrevocable. The*
26 *affidavit shall also state that the employee has chosen the election*
27 *of his or her own free will and was not coerced into the election*
28 *by the employer or any other person. An employee shall not be*
29 *permitted to rescind his or her election unless the board of*
30 *supervisors or the governing body of a district, through the*
31 *adoption of a subsequent ordinance or resolution by majority vote,*
32 *makes a provision permitting the employee to rescind the election*
33 *applicable to the county or district. Failure to make an election*
34 *within 45 calendar days shall be considered cause for termination*
35 *of employment until the employee described in this paragraph has*
36 *made the required election.*

37 *(b) The retirement allowance for service rendered prior to the*
38 *effective date of the election under paragraph (2) or (3) of*
39 *subdivision (a) for an employee covered by any other pension*
40 *calculation shall be calculated under the employee's prior pension*

1 calculation. Any employee who has made an election shall not be
2 eligible for retirement unless the employee meets the minimum
3 requirements of the provision or provisions pursuant to the election
4 applicable at the date of retirement.

5 (c) (1) An election for the pension calculation stated in Section
6 31676.01 by any employee hired before approval of the resolution
7 shall include the signature of the designated beneficiary of the
8 employee's pension acknowledging the election, or shall include
9 a written declaration, made under penalty of perjury, of one or
10 more of the following as may be applicable:

11 (A) The beneficiary has no identifiable community property
12 interest in the benefit.

13 (B) The employee does not know, and has taken all reasonable
14 steps to determine, the whereabouts of the beneficiary.

15 (C) The beneficiary has been advised of the election and has
16 refused to sign the written acknowledgment.

17 (D) The beneficiary is incapable of executing the
18 acknowledgment because of an incapacitating mental or physical
19 condition.

20 (2) The purpose of this subdivision is to notify the beneficiary,
21 including the employee's spouse or domestic partner, of an election
22 made by the employee that may affect the entitlement of the
23 beneficiary. In addition to the foregoing, if the designated
24 beneficiary of an employee's pension is a spouse or domestic
25 partner of the employee, the election shall also evidence agreement
26 to the election by the spouse or domestic partner.

27 (d) In the event the employee elects the pension calculation
28 stated in Section 31676.01, the employee shall be eligible to receive
29 a contribution from the county or district based on the employee's
30 contribution to a defined contribution program.

31 (e) In addition to employees represented by bargaining units,
32 any other employees not represented by a bargaining unit, as well
33 as supervisors, managers, and executives, may be subject to
34 subdivision (a) pursuant to the resolution described in subdivision
35 (a).

36 (f) This section shall apply only to members who retire on or
37 after the effective date of the resolution described in subdivision
38 (a).

39 (g) This section shall not apply to safety members.

1 (h) A resolution adopted by the board of supervisors under
2 subdivision (a) shall not apply to the employees of any district
3 within the county. The governing body of a district may elect, by
4 resolution adopted by majority vote, to make this section applicable
5 to the employees of the district irrespective of whether the board
6 of supervisors has made that election applicable to employees in
7 the county.

8 (i) Any person employed subsequent to the effective date of a
9 resolution adopted under subdivision (a) who would otherwise
10 qualify as a member shall not become a member until he or she
11 certifies his or her election, or otherwise as described above has
12 been deemed to have elected, to be covered by the pension
13 calculation stated in Section 31676.01 or the pension calculation
14 stated in Section 31676.19. Any employee who subsequently
15 otherwise becomes eligible for the pension calculation stated in
16 Section 31676.19 subsequent to the effective date of a resolution
17 adopted under subdivision (a) shall continue to be covered by any
18 immediately preceding retirement plan to which he or she was
19 entitled from the county or district until he or she certifies his or
20 her election to be covered by the pension calculation stated in
21 Section 31676.01 or the pension calculation stated in Section
22 31676.19.

23 (j) In the event that the final day to make an election or perform
24 an act described in this section falls on a weekend or on a county
25 or district holiday, a subsequent election or act shall be timely if
26 made or performed on the immediately following regular business
27 day of the county or district.

28 SEC. 2. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.

37 SEC. 3. This act is an urgency statute necessary for the
38 immediate preservation of the public peace, health, or safety within
39 the meaning of Article IV of the Constitution and shall go into
40 immediate effect. The facts constituting the necessity are:

1 *In order that the terms of a memorandum of understanding*
2 *between the Orange County Employees Association and Orange*
3 *County regarding the implementation of a new, optional tier of*
4 *retirement benefits for new and incumbent employees take effect*
5 *as soon as possible, it is necessary that this act take effect*
6 *immediately.*

7 ~~SECTION 1. Section 20815 of the Government Code is~~
8 ~~amended to read:~~

9 ~~20815. (a) Notwithstanding any other provision of this part,~~
10 ~~including, but not limited to, Sections 20225 and 20790, the board~~
11 ~~shall not combine the assets and liabilities of public agency~~
12 ~~employers into a single account for the purpose of setting a uniform~~
13 ~~rate of employer contributions for all public agency employers.~~
14 ~~The rate at which a public employer's contribution to this system~~
15 ~~shall be fixed shall be based upon its own experience. Provisions~~
16 ~~of law that provide authority for this system to combine the assets~~
17 ~~and liabilities of public employers into a single account for~~
18 ~~purposes of establishing a uniform rate are superseded to the extent~~
19 ~~that they provide that authority. For purposes of this section only,~~
20 ~~references to public employers shall not be construed to include~~
21 ~~school employers.~~

22 ~~(b) Notwithstanding subdivision (a), the assets and liabilities~~
23 ~~of a county and a trial court jointly contracting with the board~~
24 ~~under Section 20460.1 shall be combined for purposes of setting~~
25 ~~the employer contribution rate for both the county and the trial~~
26 ~~court.~~

27 ~~(c) Before a county that, with a superior court, jointly contracts~~
28 ~~with the board under Section 20460.1 may issue a pension~~
29 ~~obligation bond, the following shall occur:~~

30 ~~(1) The county and superior court shall jointly approve and~~
31 ~~submit in writing to the board the following information for~~
32 ~~purposes of preparing a computation of assets and liabilities:~~

33 ~~(A) A list of those active, inactive, and retired members who~~
34 ~~are considered county employees and those active, inactive, and~~
35 ~~retired members who are considered superior court employees.~~

36 ~~(B) A list of lump-sum payments previously made by either the~~
37 ~~county or the superior court to the system for the period from~~
38 ~~January 1, 2001, to the proposed date of issuance of the pension~~
39 ~~obligation bond, inclusive.~~

1 ~~(2) For purposes of this subdivision and the computation of~~
2 ~~assets and liabilities, the following shall apply:~~

3 ~~(A) A person shall be deemed a superior court employee for~~
4 ~~service that satisfies either of the following:~~

5 ~~(i) If the person was employed by the superior court on January~~
6 ~~1, 2001, all continuous service for the county immediately~~
7 ~~preceding January 1, 2001, regardless of whether that service was~~
8 ~~as a county employee or a county employee assigned to a trial~~
9 ~~court in the county.~~

10 ~~(ii) Any service on or after January 1, 2001, who the person is~~
11 ~~employed by the superior court.~~

12 ~~(B) A person shall be deemed a county employee for service~~
13 ~~that satisfies any of the following:~~

14 ~~(i) Any period of service for the county prior to January 1, 2001,~~
15 ~~that is not described in clause (i) of subparagraph (A).~~

16 ~~(ii) Any service on or after January 1, 2001, who the person is~~
17 ~~employed by the county.~~

18 ~~(3) The board shall forward its computation of assets and~~
19 ~~liabilities to the county and the superior court. The computation~~
20 ~~shall be based upon the most recent annual actuarial valuation at~~
21 ~~the time the data described in paragraph (1) is received by the~~
22 ~~board.~~

23 ~~(4) Following receipt of the computation described in paragraph~~
24 ~~(3), the superior court and county shall enter into a written~~
25 ~~agreement that contains the following:~~

26 ~~(A) The information provided to the board as described in~~
27 ~~paragraph (1) and the board's computation of assets and liabilities~~
28 ~~as described in paragraph (3).~~

29 ~~(B) The terms, including, but not limited to, the dates of payment~~
30 ~~and amount, under which the superior court shall remit funds to~~
31 ~~the county subsequent to the issuance of the pension obligation~~
32 ~~bond.~~

33 ~~(C) Nothing in the written agreement described in this paragraph~~
34 ~~shall be construed to effect the combined calculation of assets and~~
35 ~~liabilities for purposes of setting the employer contribution rate~~
36 ~~for both a county and a superior court as described in subdivision~~
37 ~~(b).~~